THE HON'BLE SRI JUSTICE N.V.RAMANA

W.P. Nos. 8257 and 23032 of 1998; 3489 and 24158 of 2002; and 25114 of 2003

Common order:

The petitioners claim to have worked with the respondents-APSEB as contract labour. It is their case that the respondents-APSEB having considered their case for absorption/selection in the light of B.P. Ms. No. 36, dated 18.05.1997, rejected their candidature on the ground that they did not possess the requisite qualifications to hold the post. Assailing the said action of the respondents, the petitioners filed the present writ petitions.

The learned counsel for the petitioners submitted that even though the petitioners did not possess the educational qualifications as on the date of their initial engagement, the fact remains they acquired the requisite qualifications subsequently, namely as on the date of consideration of their cases in the light of B.P. Ms. No. 36, dated 18.05.1997, and as such, the action of the respondents in rejecting the candidature of the petitioners for absorption/selection in the post in which they worked as contract labour, is illegal and arbitrary.

The learned Standing Counsel for the respondents submitted that in B.P.Ms.No.36, dated 18.05.1997 it had specifically mentioned that the educational qualifications required for various posts for absorption/selection of contract labourers shall be as prescribed in the Board's Service Regulations, which were in force on the date of

their initial engagement, and no relaxation of educational qualifications or other technical qualifications shall be given.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

To consider whether the petitioners are entitled for relaxation of educational qualification, it is appropriate to refer to Condition No.5 (b) of B.P. Ms. 36, dated 18.05.1997, which prescribes the educational qualifications. The said Condition No. 5(b) reads:

Educational Qualifications: Educational Qualifications shall be as per Board's Service Regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications which are prescribed in the Service Regulations for such appointment.

From a reading of the above, it is clear that the candidates should possess the educational qualifications as prescribed in the Board's Service Regulations, which were in force at the time of their initial engagement, and no relaxation of educational or other relevant technical qualifications, prescribed in the Board's Service Regulations, shall be given.

Though as per the Board's Service Regulations even an under-graduate was entitled to be appointed as LDC, the fact remains, the respondents by issuing B.P.Ms.No.236, dated

03-08-1993, amended the relevant Service Regulation, to the effect that to hold the post of L.D.C. the candidate should compulsorily be a graduate, must have knowledge of typewriting and possess lower Grade Typewriting Certificate, issued by the State Board of Technical

Education. Some of the petitioners, who claim that they are entitled to be appointed as L.D.C., admittedly, did not possess the requisite qualifications, in that, they were either under-graduates or did not possess the typewriting qualifications as on the date of their initial engagement.

Since it is the admitted case of the petitioners that they did not possess the requisite qualification as on the date of their initial engagement and that they acquired the requisite qualifications subsequent to their initial engagement, having regard to Condition No.5(b) of B.P. Ms. No.36, dated 18.05.1997, which states that no relaxation in educational or other relevant technical qualifications can be given, no exception can be taken to the action of the respondents in rejecting the cases of the petitioners for absorption/selection in the posts in which they worked with the contractors. In this context it would be appropriate to refer to the judgment of the apex Court in Civil Appeal No.3215 of 2002 and batch, dated 18.04.2002, wherein the apex Court having considered the question of grant of relaxation of prescribed qualifications, answered the same in the negative, holding as follows:

> "In our view, in the petitions before the High Court there was no question of considering public policy and the discussion on the law was totally besides the point involved in the matter. Limited issue was – whether before regularization of service of employees, the Board was bound to follow the eligibility conditions laid down in its proceedings dated 18.05.1997 and 31.12.1997. Benefit of regularization which was conferred on the employees solely depended upon eligibility of conditions including the age limit prescribed under the statutory regulations. The statutory regulations provide that there shall be no relaxation of age. In cases, where the Board has committed mistake in engaging under-age casual

> employees or has permitted the contractor to do so would not confer any right on such employees for being regularized on the basis of BPMS dated 18.05.1997.
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> In this view of the matter, the judgment rendered by the High Court cannot be sustained and is, therefore, set aside.
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> However, considering the fact that the respondents/casual employees/employees of the contractor/junior linemen are in service for more than 15 years, we do not think that this would be a fit case for disturbing their appointments made in pursuance of the order passed by the High Court.
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> Ordered accordingly. Appeals stand disposed of."

When the Board Service Regulations prescribes a particular qualification, the candidates seeking absorption/selection should possess such qualification, and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot relax the prescribed qualifications, if done it would amount to rewriting the service conditions.

The writ petitions are devoid of merit and they are accordingly dismissed. No costs.

N.V.RAMANA, J.

DATE: 02.01.2007
NSR/GRR